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1 of her employer, The Phoenix House. Plaintiff made a claim for benefits under said plan arising
2 from a disability hereafter described.

3 4. Plaintiff is informed and believes that Defendant FIRST UNUM LIFE INSURANCE
4 COMPANY and/or UNUM LIFE INSURANCE COMPANY OF AMERICA administers and
5 underwrites the long-term disability plan applicable to Plaintiff. Said plan sued herein as
6 Defendant PHOENIX HOUSE FOUNDATION EMPLOYEES LONG TERM DISABILITY
7 PLAN. Said entities are a plan and/or fiduciaries within the meaning of 29 USC Section 1001
8 and 1002.

9
10 **FIRST CAUSE OF ACTION**

11 **FOR FAILURE TO PAY DISABILITY BENEFITS**

12 5. At all times relevant hereto, Plaintiff was a participant of the plan. On or about
13 October 5, 2005, Plaintiff began a disability leave based on significant emotional distress arising
14 from her work. This stress included fear for her safety due to unsafe conditions at work, as well
15 as ongoing personnel matters related to Plaintiff's complaint of said conditions. At all times
16 relevant hereto, Plaintiff suffered severe psychological and mental conditions entitling her to
17 benefits under the terms of the plan.

18 6. The plan has an elimination period of six months prior to allowing someone to qualify
19 for benefits. The Plaintiff made timely application for benefits. Unfortunately, in the
20 intervening period, Plaintiff was diagnosed with follicular lymphoma. This physical diagnosis
21 additionally made her disabled from work.

22 7. Plaintiff timely made application for benefits under the plan. Pursuant to its terms,
23 Plaintiff was initially disabled based on her emotional condition and subsequently disabled
24 because of a cancer-related medical condition.

25 8. Plaintiff made a timely application for benefits under the terms of the plan and
26 cooperated in every respect in providing appropriate documentation.

27 9. Notwithstanding the foregoing, Defendants, and each of them, harmfully denied
28

1 Plaintiff her benefits, finding that she was not disabled from working prior to her diagnosis of
2 lymphoma and that, by virtue of her not being at work for the intervening time period prior to her
3 diagnosis, did not then qualify for benefits under the plan.

4 10. Plaintiff appealed this denial of benefits which was subsequently affirmed by Unum.
5 Plaintiff has exhausted all remedies, internal, contractual and administrative remedies, available
6 to her and required under the terms of the plan.

7 11. The question of application of the plan in issues regarding disability were ministerial
8 in nature and the plan did not reserve discretion to make such decisions. Accordingly, the
9 decision to deny benefits is to be reviewed by the Court de novo. In the alternative, termination
10 to deny Plaintiff benefits was discretionary within the terms of the plan and the decision of the
11 administrators and fiduciaries constituted an abuse of discretion.

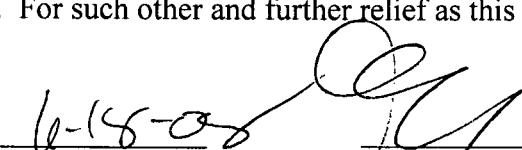
12 12. Accordingly, Plaintiff is entitled to declaratory relief that she is entitled to plan
13 benefits and an order enjoining the Defendants from denying past and future benefits, together
14 with the restitution of all unpaid sums from and after the expiration of the elimination period on
15 April of 2006, plus interest thereon.

16 13. In addition, Plaintiff has incurred attorney's fees in the prosecution of this matter and
17 is entitled to restitution of the same pursuant to 29 USC Section 1132(g).

18 WHEREFORE, Plaintiff prays judgment against Defendants and each of them, as
19 follows:

- 20 1. For declaratory and injunctive relief as prayed herein;
21 2. For restitution of benefits not paid, together with interest thereon;
22 3. For attorney's fees according to proof;
23 4. For costs of suit incurred herein; and
24 5. For such other and further relief as this Court may deem just and proper.

25
26 DATED: 6-18-08

27 
28 GEORGE L. de la FLOR
Attorney for Plaintiff

**UNITED STATES
DISTRICT COURT**
SOUTHERN DISTRICT OF CALIFORNIA
SAN DIEGO DIVISION

**# 152300 - TC
* * C O P Y * *
June 25, 2008
14:53:56**

Civ Fil Non-Pris

USAO #: 08CV1139
Judge.: NAPOLEON A JONES, JR
Amount.: \$350.00 CK
Check#: BC3907

Total-> \$350.00

FROM: ATHY HOPKINS
VS
FIRTS UNUM LIFE INSURANCE CO.

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

ATHY HOPKINS

DEFENDANTS

First Unum Life Insurance Company of America, Phoenix
House Foundation, Inc. Employees Long Term Disability Plan(b) County of Residence of First Listed Plaintiff San Diego
(EXCEPT IN U.S. PLAINTIFF CASES)County of Residence of First Listed Defendant
(IN U.S. PLAINTIFF CASES ONLY)NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE
SOUTHERN DISTRICT OF CALIFORNIA
LAND INVOLVED

(c) Attorney's (Firm Name, Address, and Telephone Number)

George L. de la Flor, Law Offices of George L. de la Flor, APC
355 La Mesa Blvd., La Mesa, CA 91941 (619)698-2926

Attorneys (If Known)

08 CV 1139 J CAB

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

| CONTRACT | TORTS | FORFEITURE/PENALTY | BANKRUPTCY | OTHER STATUTES |
|--|--|--|---|--|
| <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise | PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL PROPERTY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability | <input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other | <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) | <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes |
| REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property | CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights | PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition | LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input checked="" type="checkbox"/> 791 Empl. Ret. Inc. Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions | FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609 |

V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from another district (specify)
- ☐ 6 Multidistrict Litigation
- ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
29 U.S.C. 1100, et seq.Brief description of cause:
Failure to pay disability benefits under ERISA

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☒ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

152300

AMOUNT

\$ 350

APPLYING IFP

JUDGE

MAG. JUDGE

CR

FAL

6/25/08